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## BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AZ CORP COMMISSION  
DOCKET CONTROL

DOCKETED BY

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

IN THE MATTER OF THE APPLICATION OF  
THE CITY OF FLAGSTAFF TO UPGRADE  
EXISTING RAILROAD CROSSINGS OF THE  
BNSF RAILWAY COMPANY AT STEVES  
BOULEVARD AND FANNING DRIVE IN THE  
CITY OF FLAGSTAFF, COCONINO COUNTY,  
ARIZONA, DOT CROSSING NOS. 025099J  
AND 025129Y.

DOCKET NO. RR-02635B-09-0075

PROCEDURAL ORDER**BY THE COMMISSION:**

On February 19, 2009, the City of Flagstaff ("City") filed with the Arizona Corporation Commission ("Commission") an application for approval to upgrade two existing at-grade railroad crossings of the BNSF Railway Company ("BNSF") by installing additional warning devices in the form of wayside horns, as part of the City's plan to create a New Quiet Zone within the City's limits. A hearing in this matter convened on May 6, 2009, and was continued. A full evidentiary hearing was held at the Commission's offices in Phoenix, Arizona on July 8, 2009. The City, BNSF, and Staff appeared through counsel. Walter Robertson was granted intervention and appeared on his own behalf. At the conclusion of the hearing, the City, BNSF, and Staff were directed to file late-filed exhibits and briefs, and Mr. Robertson was instructed that he may do so although he is not required to do so.

It is now appropriate to memorialize the late-filed exhibit and briefing requirements announced at the hearing.

IT IS THEREFORE ORDERED that the City, BNSF, and Staff shall each file with Docket Control, by July 29, 2009, the following late-filed exhibits:

- An assessment of the accuracy of all of the items of data included in the U.S. DOT Crossing Inventories on file with the Federal Railroad Administration ("FRA") for the crossings at Beaver Street, San Francisco Street, Enterprise Avenue, Steves Boulevard, and Fanning

Drive, to include a copy of and the full citation to the source for any definition used to determine the information's accuracy and, if any item of information is inaccurate, identification of the item, how the information is inaccurate, and what information would be accurate; and

- A printout of the FRA Quiet Zone Calculator result for a New Quiet Zone including the crossings at Beaver Street, San Francisco Street, and Enterprise Road, calculated using accurate information for the Supplemental Security Measures ("SSMs") existing at the crossings, including characterizing any SSM that meets the FRA definition of "Pre-existing SSM" accordingly, and including corrected information for any data in the U.S. DOT Crossing Inventories that has been identified as inaccurate.<sup>1</sup>

IT IS FURTHER ORDERED that the City shall file with Docket Control, **by July 29, 2009**, the following additional late-filed exhibits:

- A complete copy of the diagrams for the "City of Flagstaff Rail Crossing Modification Project" concerning which Randy Whitaker testified at hearing;
- A complete copy of the "Notice of Intent" that was sent out by the City regarding establishment of the New Quiet Zone; and
- Copies of any documentation of service of the "Notice of Intent" on the entities to whom it was sent.

IT IS FURTHER ORDERED that the City, BNSF, and Staff shall each file with Docket Control, **by August 12, 2009**, a brief that fully analyzes the following issues and that includes citations to any legal authority supporting or contrary to the party's position and, if the party relies upon testimony or documentary evidence from this matter, citation to each appropriate area of the transcript or to each appropriate document:

- BNSF has asserted that the Commission is preempted by federal law from taking action in this case, both as to approving the addition of wayside horns and as to imposing any requirements as to the safety of crossings located within a Quiet Zone. Each party shall analyze whether the Commission is preempted by federal law from taking action in this case, both as to the two crossings for which approval of the addition of wayside horns has been requested and as to imposing any safety requirements on the other three crossings for which no Commission approval has been requested. The parties shall specifically address the Commission's authority to require installation of additional safety devices to enhance the safety of any or all of these crossings if the Commission determines that any or all of the crossings is or are not currently safe. The parties shall specifically address whether the Commission's authority extends to the sidewalks abutting the public roadways that cross the railway lines and the Commission's authority to require installation of additional safety devices specifically intended to alleviate safety hazards for pedestrians.
- Each party shall analyze whether the City has met all of the requirements for designation of a Quiet Zone under 49 CFR § 222.39(a) and what effect failure to meet any of those requirements has upon the establishment of the Quiet Zone. The parties shall specifically

<sup>1</sup> If a party determines that this requirement cannot be met in a timely fashion, or at all, the party shall promptly make a filing in this docket explaining the situation.

address whether the Commission has the authority to make a finding regarding whether the City has or has not met all of the requirements; shall specifically address how failure to comply with any of the requirements would change the preemption analysis, if at all; and shall specifically address what authority the Commission may exercise if the City has failed to meet any of the requirements.

IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized Communications) applies to this proceeding and shall remain in effect until the Commission's Decision in this matter is final and non-appealable.

IT IS FURTHER ORDERED that the presiding Administrative Law Judge may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 9th day of July, 2009.

  
SARAH N. HARPRING  
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered this 9th day of July, 2009, to:

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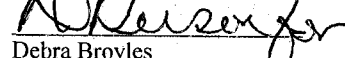
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By:   
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Secretary to Sarah N. Harpring